

DuaneMorris®

FIRM and AFFILIATE OFFICES

RACHAEL G. PONTIKES
DIRECT DIAL: (312) 499-6757
PERSONAL FAX: 312.277.6903
E-MAIL: rgpontikes@duanemorris.com

www.duanemorris.com

NEW YORK
LONDON
SINGAPORE
LOS ANGELES
CHICAGO
HOUSTON
HANOI
PHILADELPHIA
SAN DIEGO
SAN FRANCISCO
BALTIMORE
BOSTON
WASHINGTON, DC
LAS VEGAS
ATLANTA
MIAMI
PITTSBURGH
NEWARK
BOCA RATON
WILMINGTON
CHERRY HILL
PRINCETON
LAKE TAHOE
HO CHI MINH CITY

September 23, 2009

Via ECF

Magistrate Judge Tomlinson
United States District Court
Eastern Division of New York
100 Federal Plaza, Courtroom 910
Central Islip, NY 11722

Re: ***Palm Bay v. Marchesi di Barolo*, Case No. 09 CV 601**

Dear Judge Tomlinson:

We write in brief response to the letter motion of plaintiff Palm Bay International, Inc. for a protective order to preclude defendant Marchesi di Barolo, S.p.A. "from seeking discovery relating to confidential agency agreements entered into by David and Marc Taub (Palm Bay's principals) and wine producers other than Marchesi."

The only such discovery that Marchesi has sought was a line of questioning directed to Marc Taub at his deposition on September 14, 2009, and to David Taub at his deposition of today. Both depositions were cross-noticed both for this case and for the separate case Mr. Taub and his father personally brought against Marchesi, which suit is currently pending before Judge Pratt of this Court, *Taub v. Marchesi*, Index No. CV-09-0059. (For the Court's reference, copies of the two deposition notice, without attachments, are attached hereto as Exhibit A.) Marchesi has moved to consolidate the two cases, which motion the Taubs have opposed in part and as to which Palm Bay has taken no position. Marchesi's motion to consolidate is *sub judice*.

The *Taub v. Marchesi* case relates to an Agency Agreement between the parties, and the line of deposition questioning at issue sought information with regard to other Agency Agreements the Taubs have entered into with other wineries. Such questioning was directed toward issues relevant to the *Taub* case, which revolves around the Taubs' former role as agents of Marchesi. To the extent there was any confusion on this point, counsel for Marchesi offered at the deposition to "explain the relevance of [the questioning], if you're interest[ed]." Counsel for Palm Bay was not.

Accordingly, Marchesi opposes Palm Bay's motion for a protective order on the ground that it has sought no such discovery from Palm Bay, only from the Taubs in their capacity as plaintiffs in the related *Taub v. Marchesi* suit. So that this issue may be promptly resolved, tomorrow we intend to bring a motion in *Taub v. Marchesi* to compel answers to the questioning at issue.

DUANE MORRIS LLP

190 SOUTH LASALLE STREET, SUITE 3700 CHICAGO, IL 60603-3433

PHONE: 312.499.6700 FAX: 312.499.6701

Magistrate Judge Tomlinson
September 23, 2009
Page 2

Duane Morris

We thank the Court for its consideration.

Respectfully submitted:

/s/

Rachael G. Pontikes

RGP:ral
Attachment

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PALM BAY INTERNATIONAL, INC.

Plaintiff,

v.

Case No. CV 09 601

MARCHESI DI BAROLO S.P.A.,

Defendant.

DAVID S. TAUB and MARC TAUB

Plaintiff,

-against-

Case No. 2:09-cv-00599

MARCHESI DI BAROLO S.P.A.,

Defendant.

NOTICE OF DEPOSITION

TO: Counsel of Record

Marchesi Di Barolo S.P.A. ("Marchesi"), by their counsel of record and pursuant to Rule 30 of the Federal Rules of Civil Procedure, gives notice that the deposition upon oral examination of MARC TAUB will commence at 10:00 a.m. (EDT) on August 26, 2009, at the Offices of Duane Morris, LLP, 1540 Broadway, New York, New York 10036. In addition, the witness is requested to bring to the deposition the documents identified on the attached Rider.

This deposition will be taken before a Notary Public or other officer authorized by law to administer oaths for purposes of discovery and/or for use at trial and will continue day-to-day until completed. This deposition will be recorded by stenographic and/or video means.

You are invited to attend and participate.

MARCHESI DI BAROLO S.P.A.

Dated: August 4, 2009

And

John Dellaportas
Javier Chavez, Jr.
DUANE MORRIS, LLP
1540 Broadway
New York, NY 10036-4086
Tel: (212) 692-1000
Fax: (212) 692-1020
Dellajo@duanemorris.com
jchavez@duanemorris.com

By:



Rachael G. Pontikes
Larry Selander
DUANE MORRIS LLP
190 South LaSalle Street
Suite 3700
Chicago, Illinois 60603
Tel: (312) 499 6700
Fax: (312) 499-6701
rgpontikes@duanemorris.com
lselander@duanemorris.com

*Attorneys for Defendant
Marchesi Di Barolo S.P.A.*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PALM BAY INTERNATIONAL, INC.

Plaintiff,

v.

Case No. CV 09 601

MARCHESI DI BAROLO S.P.A.,

Defendant.

DAVID S. TAUB and MARC TAUB

Plaintiff,

-against-

Case No. 2:09-cv-00599

MARCHESI DI BAROLO S.P.A.,

Defendant.

NOTICE OF DEPOSITION

TO: Counsel of Record

Marchesi Di Barolo S.P.A. ("Marchesi"), by their counsel of record and pursuant to Rule 30 of the Federal Rules of Civil Procedure, gives notice that the deposition upon oral examination of DAVID S. TAUB will commence at 10:00 a.m. (EDT) on August 6, 2009, at the Offices of Duane Morris, LLP, 1540 Broadway, New York, New York 10036. In addition, the witness is requested to bring to the deposition the documents identified on the attached Rider.


This deposition will be taken before a Notary Public or other officer authorized by law to administer oaths for purposes of discovery and/or for use at trial and will continue day-to-day until completed. This deposition will be recorded by stenographic and/or video means.

You are invited to attend and participate.

MARCHESI DI BAROLO S.P.A.

Dated: June 19, 2009

And
John Dellaportas
Javier Chavez, Jr.
DUANE MORRIS, LLP
1540 Broadway
New York, NY 10036-4086
Tel: (212) 692-1000
Fax: (212) 692-1020
Dellajo@duanemorris.com
jchavez@duanemorris.com

By: 
Rachael G. Pontikes
Larry Selander
DUANE MORRIS LLP
190 South LaSalle Street
Suite 3700
Chicago, Illinois 60603
Tel: (312) 499 6700
Fax: (312) 499-6701
rgpontikes@duanemorris.com
lselander@duanemorris.com

*Attorneys for Defendant
Marchesi Di Barolo S.P.A.*